

LABOR SERVICES DIVISION[875]

Adopted and Filed

Rule making related to elevator safety

The Elevator Safety Board hereby amends Chapter 65, “Elevator Safety Board Administrative and Regulatory Authority,” Chapter 66, “Waivers or Variances from Administrative Rules by the Elevator Safety Board,” Chapter 67, “Elevator Safety Board Petitions for Rule Making,” Chapter 69, “Contested Cases Before the Elevator Safety Board,” Chapter 70, “Public Records and Fair Information Practices of the Elevator Safety Board,” Chapter 71, “Administration of the Conveyance Safety Program,” and Chapter 72, “Conveyances Installed on or After January 1, 1975,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 89A.3.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapters 17A and 89A and 2020 Iowa Acts, House File 2389.

Purpose and Summary

The Board is required by Iowa Code section 89A.13(7) to review all elevator rules every three years. Many of these amendments are the result of that systematic review. Additional amendments were prompted by the passage of 2020 Iowa Acts, House File 2389, which amended the Administrative Procedure Act.

These amendments update the office address, remove obsolete language, update editions of elevator codes adopted by reference, set forth the requirement to submit petitions for rule making and their disposition to the Administrative Rules Review Committee, set forth the requirement to enter information about waiver petitions and their disposition in the Legislative Services Agency’s website, clarify that the Board has jurisdiction over alterations of elevators, set forth procedures and conditions for controlling or preventing access to conveyances and dormant conveyances, and require “scope of work” to be included with an application for an alteration permit.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on February 10, 2021, as **ARC 5436C**. A representative of an elevator industry association commented in favor of adopting by reference the national consensus codes. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Board on March 23, 2021.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to 875—Chapter 66.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on June 1, 2021.

The following rule-making actions are adopted:

ITEM 1. Amend subrule 65.2(2) as follows:

65.2(2) Hearing and deciding appeals concerning inspection reports that relate to the installation, alteration, operation, and maintenance of conveyances in the state.

ITEM 2. Amend subrule 65.2(5) as follows:

65.2(5) Establishing committees of the board, ~~the members and chairpersons of which shall be appointed by the board chairperson.~~

ITEM 3. Amend subrule 65.3(3) as follows:

65.3(3) The board shall elect a chairperson, vice chairperson, and secretary from its membership at the first meeting after July 1 of each year. Neither the commissioner nor the commissioner's designee may serve as chairperson. The chairperson shall, when present, preside at meetings, appoint members and chairpersons of committees, and perform all duties and exercise all powers of the chairperson. The vice chairperson shall, in the absence or incapacity of the chairperson, perform all duties and exercise all powers of the chairperson.

ITEM 4. Amend subrule 65.4(5) as follows:

65.4(5) Members of the public may be present during board meetings unless the board votes to hold a closed session in accordance with Iowa Code chapter 21. The dates and locations of board meetings may be obtained from the division of ~~labor's Web site~~ labor services' website or the board office.

ITEM 5. Amend rule 875—65.5(89A) as follows:

875—65.5(89A) Official communications. All official communications, including submissions and requests, shall be addressed to the Elevator Safety Board, Department of Workforce Development, Division of Labor Services, ~~1000 East Grand Avenue~~ 150 Des Moines Street, Des Moines, Iowa ~~50319~~ 50309.

ITEM 6. Amend **875—Chapter 66**, title, as follows:

WAIVERS OR VARIANCES FROM ADMINISTRATIVE RULES BY THE ELEVATOR SAFETY BOARD

ITEM 7. Adopt the following **new** subrules 66.1(1) and 66.1(2):

66.1(1) Authority. Authority for the board to grant waivers is set forth in Iowa Code sections 17A.9A and 89A.11.

66.1(2) Definition. “Waiver” means a waiver pursuant to Iowa Code section 17A.9A or an exception or variance pursuant to Iowa Code section 89A.11.

ITEM 8. Amend rule 875—66.3(17A,89A), introductory paragraph, as follows:

875—66.3(17A,89A) Criteria for waiver ~~or variance~~. In response to a petition completed pursuant to this chapter, the board may, in its sole discretion, issue an order waiving, in whole or in part, the requirements of a rule as applied to an identified person on the basis of the particular circumstances of that person if the board finds, based on clear and convincing evidence, all of the following:

ITEM 9. Amend subrule 66.3(5) as follows:

66.3(5) There is a reasonable relationship between the age of the conveyance and the ~~variance~~ waiver requested.

ITEM 10. Amend subrule 66.4(3) as follows:

66.4(3) Filing petition. A petition is deemed filed when it is received in the board's office. A petition should be sent to the Elevator Safety Board, Department of Workforce Development, Division of Labor Services, ~~1000 East Grand Avenue~~ 150 Des Moines Street, Des Moines, Iowa ~~50319~~ 50309. The petitioner shall submit the petition and all related materials for consideration at least three weeks prior to a scheduled board meeting for board review of the petition at the meeting.

ITEM 11. Amend rule 875—66.5(17A,89A), introductory paragraph, as follows:

875—66.5(17A,89A) Content of petition. The required form for a petition for waiver ~~or variance~~ is available on the board's website at www.iowaelevators.gov. A petition for waiver shall include the following information where applicable and known to the petitioner:

ITEM 12. Rescind rule 875—66.12(17A,89A) and adopt the following new rule in lieu thereof:

875—66.12(17A,89A) Summary reports. Information about all orders granting or denying a waiver petition shall be submitted by the board staff to the legislative services agency through the designated Internet site within 60 days of granting or denying the petition. The information submitted is available to the public via the website.

ITEM 13. Amend subrule 67.1(7) as follows:

67.1(7) The board may deny a petition because it does not provide the required information. ~~The petitioner may file a new petition on the same subject that seeks to eliminate the grounds for the board's rejection.~~

ITEM 14. Amend rule 875—67.3(17A,89A) as follows:

875—67.3(17A,89A) Inquiries. Inquiries concerning the status of a petition for rule making may be made to Elevator Safety Board, Department of Workforce Development, Division of Labor Services, ~~1000 East Grand Avenue~~ 150 Des Moines Street, Des Moines, Iowa ~~50319~~ 50309.

ITEM 15. Amend subrule 67.4(3) as follows:

67.4(3) Within 60 days after the filing of the petition, or within any longer period agreed to by the petitioner, the board shall deny the petition in writing and notify petitioner of its action and the specific grounds for the denial, or grant the petition and notify petitioner that the board will institute rule-making proceedings on the subject of the petition. Notice shall be sent by the board office to the petitioner by regular mail. Petitioner shall be deemed notified of the denial or granting of the petition on the date the board office mails the required notification to the petitioner. Copies of the petition and the document granting or denying the petition shall be sent to the administrative rules review committee.

ITEM 16. Amend subrule 69.1(5) as follows:

69.1(5) The commissioner shall not consider any request for waiver ~~or variance~~ of an administrative rule made as part of a petition for reconsideration. Requests for waivers ~~or variances~~ of administrative rules may only be made to the board pursuant to the provisions of 875—Chapter 66.

ITEM 17. Amend paragraph **69.10(5)“d”** as follows:

d. A certification in substantially the following form:

I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the Elevator Safety Board, Department of Workforce Development, Division of Labor Services, ~~1000 East Grand Avenue~~ 150 Des Moines Street, Des Moines, Iowa ~~50319~~ 50309, and to the names and addresses of the parties listed below by depositing the same in a United States post office mailbox with correct postage properly affixed.

(Date)

(Signature)

ITEM 18. Amend subrule 70.3(1) as follows:

70.3(1) Address. The board's mailing address is Department of Workforce Development, Division of Labor Services, ~~1000 East Grand Avenue, Des Moines, Iowa 50319~~. The board's staff is located at 150 Des Moines Street, Des Moines, Iowa 50309.

ITEM 19. Amend subrule 70.15(4) as follows:

70.15(4) Waivers ~~and variances~~. Requests for waivers ~~and variances~~, board proceedings and rulings on such requests, ~~and reports prepared for the administrative rules review committee and others~~ are stored on paper and electronically.

ITEM 20. Adopt the following **new** definitions of "Imminent danger," "Seal off," "Serious danger" and "Waiver" in rule ~~875—71.1(89A)~~:

"Imminent danger" means one or more conditions or practices exist which are reasonably expected to cause death or serious physical harm immediately or before the danger can be eliminated through the procedures described in subrules 71.11(6) and 71.11(7).

"Seal off" means to place a conveyance controller in the off position and attach a wire seal with a tag warning that the conveyance must be rendered dormant or shall not be used pending repairs.

"Serious danger" means one or more conditions or practices exist which create a substantial probability that death or serious physical harm could result.

"Waiver" means a waiver pursuant to Iowa Code section 17A.9A or an exception or variance pursuant to Iowa Code section 89A.11.

ITEM 21. Amend subrule 71.5(4) as follows:

71.5(4) Issuance of an installation permit shall not be construed as a waiver ~~or variance~~ of any requirement of law.

ITEM 22. Amend subrule 71.9(2) as follows:

71.9(2) Application for an alteration permit shall be in the format required by the labor commissioner and shall include scope of work, drawings and specifications of all planned changes and the fee specified by rule 875—71.16(89A).

ITEM 23. Amend subrule 71.9(3) as follows:

71.9(3) Issuance of an alteration permit shall not be construed as a waiver ~~or variance~~ of any requirement of law.

ITEM 24. Amend paragraph **71.11(7)"b"** as follows:

b. After the period specified on the inspection report has passed, the labor commissioner may cause a state inspector to verify correction of all unsafe conditions. If reinspection reveals no significant progress toward correcting the unsafe conditions, or the remaining unsafe conditions create significant safety concerns, the labor commissioner may serve a notice of intent to suspend, deny or revoke the operating permit.

If there is a serious danger, the labor commissioner may seal off the conveyance and shall post notice on the conveyance that it is not to be used pending repairs. Use of a conveyance prior to completion of the required repairs may result in additional legal proceedings. The conveyance may be returned to service only after the serious danger has been corrected and the conveyance has passed a comprehensive inspection.

ITEM 25. Rescind paragraph **71.11(7)“e”** and adopt the following **new** paragraph in lieu thereof:
e. If a special inspector conducted the inspection, more than 45 days have passed since the deadline for correction of hazards, and an inspection report indicating the hazards are corrected has not been filed, the labor commissioner may:

- (1) Contact the special inspector,
- (2) Send a second abatement order to the owner with copies of the inspection report and first abatement order, or
- (3) Send a state inspector to inspect the conveyance. If there is a serious danger, the labor commissioner may seal off the conveyance and shall post notice on the conveyance that it is not to be used pending repairs. Use of a conveyance prior to completion of the required repairs may result in additional legal proceedings. The conveyance may be returned to service only after the serious danger has been corrected and the conveyance has passed a comprehensive inspection.

ITEM 26. Adopt the following **new** paragraph **71.11(7)“h”**:

h. If notice pursuant to paragraph 71.11(7)“*a*” was provided and a conveyance is not in use and the owner does not intend to use the conveyance, repair the conveyance, or make the conveyance dormant, the commissioner may seal off the conveyance.

ITEM 27. Amend subrule 71.11(8) as follows:

71.11(8) *Imminent danger.* If the labor commissioner determines that continued operation of a conveyance pending correction of unsafe conditions creates an imminent danger, the labor commissioner may seal off the conveyance and shall post notice on the conveyance that it is not to be used pending repairs. Use of a conveyance contrary to posted notice by the labor commissioner may result in additional legal proceedings pursuant to Iowa Code section 89A.10(3) or 89A.18. The conveyance may be returned to service only after the imminent danger has been corrected and the conveyance has passed a comprehensive inspection.

ITEM 28. Amend rule 875—71.18(89A) as follows:

875—71.18(89A) Other regulations affecting elevators. Regulations concerning accessibility of buildings and conveyances available to the public are found at 661—Chapter 302. Regulations governing the safety and health of employees who work in and around elevators are found at 875—Chapters 2 to 26. Iowa Code chapter 91C and 875—Chapter 150 apply to companies that alter and install conveyances. No rule in 875—Chapters 71 to 73 shall be interpreted as creating an ~~exemption, a waiver, or variance~~ from any otherwise applicable regulation or statute.

ITEM 29. Amend subrule 72.1(10), introductory paragraph, as follows:

72.1(10) For installations between January 14 ~~15~~, 2015, and May 16, 2018:

ITEM 30. Amend subrule 72.1(11), introductory paragraph, as follows:

72.1(11) For installations ~~on or after~~ between May 17, 2018, and May 31, 2021:

ITEM 31. Adopt the following **new** subrule 72.1(12):

72.1(12) For installations on or after June 1, 2021:

- a.* ASME A17.1 shall mean ASME A17.1-2019/CSA B44-19, except that,
 - (1) Approaching object detection as described in 2.13.5 shall be optional; and
 - (2) ASME A17.1-2016/CSA B44-16, requirement 2.13.5, shall apply if approaching object detection is not installed;
- b.* ASME A17.7 shall mean ASME A17.7-2012/CSA B44.7-12;
- c.* ASME A17.8 shall mean ASME A17.8-2016/CSA B44.8-16;
- d.* ASME A18.1 shall mean ASME A18.1 (2014), except Chapters 4, 5, 6, and 7;
- e.* ANSI A117.1 shall mean ANSI A117.1 (2017), except for requirement 407.4.7.1.2; and

f. ANSI/NFPA 70 shall mean ANSI/NFPA 70 (2017).

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/21/21.